



ITEM NO. 5

STAFF REPORT

SECOND READING AND ADOPTION

Ord No. 0-09-12 First Reading: 8/21/12

Second Reading: 9/18/12 Item No.

DATE: SEPTEMBER 18, 2012
~~AUGUST 21, 2012~~
TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: DEAN DERLETH, CITY ATTORNEY
SUBJECT: ORDINANCE ADDRESSING SUPERVISION OF EXECUTIVE ASSISTANT TO COUNCIL/OFFICE MANAGER AND RELATED CLARIFICATIONS TO THE COLTON MUNICIPAL CODE

RECOMMENDED ACTION

Since the first reading/introduction of this Ordinance on June 19, 2012, two revisions have been suggested by Council Member Toro and discussed with Mayor Zamora. Accordingly, it is recommended that the City Council:

1. Waive Full Reading and Introduce by Title Only revised Ordinance No. O-09-12, an Ordinance of the City Council of the City of Colton, California Adding Section 2.04.040 to the Colton Municipal Code Relating to the Supervision of the Executive Assistant to the Council/Office Manager and Making Other Clarifying Changes to Section 2.16.070(B) of the Colton Municipal Code.

GOAL STATEMENT

The proposed action will support the City Council's goal to have its Executive Assistant/Office Manager report directly to the Mayor and Members of the City Council.

BACKGROUND

The City Council has expressed an interest in being able to supervise and control the appointment and removal of the employee who occupies the position of its Executive Assistant/Office Manager, and you directed the City Attorney to address the issue. The attached ordinance will accomplish this goal.

ISSUES/ANALYSIS

Currently, all positions within the City are under the management and supervision of the City Manager, other than the City Clerk, City Treasurer and City Attorney. Adding the Executive Assistant to Council/Office Manager to this list requires a change to the Colton Municipal Code.

CMC SECTION 2.04.040

The attached ordinance first adds a new Section 2.04.040 (Executive Assistant to the Council/Office Manager) to Chapter 2.04 (City Council), in order to establish the City Council's appointment, supervision and removal authority for the position. The Section also provides that the employee will serve at the will and pleasure of the City Council in accordance with the Compensation and Benefits Resolution for Non-Represented Confidential Group Employees of the City of Colton, but will also be a member of the civil service system, as provided for in Chapter 2.48 of the Colton Municipal Code.

Proposed Revisions: Since its first reading/introduction on June 19th, the following revisions have been suggested to Ordinance No. O-09-12:

"2.04.040 Executive Assistant to the Council/Office Manager

The City Council shall have the authority to appoint, supervise and remove the Executive Assistant to the Council/Office Manager, who shall serve at the will and pleasure of the City Council in accordance with the Compensation and Benefits Resolution for Non-Represented Confidential Group Employees of the City of Colton, but who shall be a member of the civil service system as provided for in Chapter 2.48 of the Colton Municipal Code. ~~All a~~ Actions of the City Council taken pursuant to this section shall be by at least a majority vote (at least 4) of the entire membership of the City Council; provided, however, that any termination decision shall be by at least a super majority vote (at least 5) of the entire membership of the City Council. The employee's ~~immediate supervisor for purposes of day-to-day final~~ shall take direction ~~from the~~ shall be the Mayor; and ~~each Council Member individually in the absence of the Mayor the Mayor Pro Tempore.~~ If a title change is implemented for the position of Executive Assistant to the Council/Office Manager, the provisions of this section shall apply to such position even before an amendment to this section may be adopted."

The two revisions are summarized as follows:

1. Majority vs. Super Majority Votes: The original ordinance introduced on 6-19-12 stated that all actions of the City Council taken pursuant to its authority shall be by at least a majority vote of the entire membership of the City Council (at least 4 affirmative votes). This would include any required formal actions, such as hiring and other personnel issues. It is requested that termination decisions will instead require a supermajority vote (at least 5 affirmative votes). This option is entirely within the policy discretion of the City Council.

2. Direction: The original ordinance introduced on 6-19-12 assumed that, although the employee will work for the Mayor and all Council Members, it was necessary to establish an immediate supervisor for purposes of day-to-day final direction.

It has been suggested that the ordinance simply provide that the employee shall take direction from the Mayor and each Council Member individually. Of course, the City Council can always work out any needed policies over time, relating to work assignments and other supervisory issues.

Please note that in discussions with the employee, she has indicated that she is okay with the proposed revisions.

CMC SECTION 2.16.070(B)

In order to clarify that the Executive Assistant to Council/Office Manager is now under the supervision of the City Council and is to be included in the civil service system, additional clarifying changes to Chapter 2.16 (City Manager) are also necessary. Specifically, Section 2.16.070(B).

Please refer to the "redline" version of Section 2.16.070(B) below for a substantive description of the changes being made to this sub-paragraph.

Since revisions are being made to Ordinance O-09-12, it will require a new first reading. The attached ordinance would be introduced by title only and its further reading would be waived.

FISCAL IMPACTS

There are no fiscal impacts related to this action

ALTERNATIVES

1. Provide alternative direction to staff.

ATTACHMENTS

Ordinance O-09-12 (as requested to be revised)

CMC Chapter 2.16 (City Manager)
Section 2.16.070(B) (Powers and Duties)

B. To appoint, on the basis of merit and, when necessary for the good of the City, demote or remove all department heads of the City, except as otherwise provided in this section, and except as he may authorize the head of a department or office to appoint and remove subordinates in such department or office.

1. Persons appointed or promoted to the following department head positions on or after June 5, 2001, shall serve at the will and pleasure of the City Manager and may be terminated from City employment by the City Manager without proof of cause or other justification and without right of appeal or hearing:

- a. Assistant City Manager;
- b. Finance Director;
- c. Community Development Director;
- d. Human Resources Manager;
- e. Police Chief;
- f. Fire Chief;
- g. Parks, Recreation and Family Services Director;
- h. City Engineer;
- i. Utility Director Redevelopment Agency Director;
- j. Redevelopment Agency Director;
- k. Librarian;
- ~~l. Executive Assistant;~~
- m. Public Services Manager;
- n. Assistant Utility Director;
- o. Community Childcare Director.

2. Any person appointed or promoted to a new department head classification created by Resolution on or after June 5, 2001, shall also serve at the will and pleasure of the City Manager and may be terminated from City employment by the City Manager without proof of cause or other justification and without right of appeal or hearing.

3. Department heads appointed or promoted to their Department Head positions prior to June 5, 2001, Shall have the right to be terminated only under the provisions of this municipal code as it existed at the time of their appointment to the position, unless they modify the terms of their employment pursuant to a contract as described below.

4. The City Manager is empowered to enter into contracts on behalf of the City with department heads establishing terms and conditions of employment. Said employment contracts shall take precedence over and supersede any otherwise applicable Ordinance, Resolution, rule or regulation, previous or current, including, but not limited to, subsection 2 16.070(B).

5. The City Manager has authority to negotiate the terms and conditions of employment contracts with department heads pursuant to the established limitations and ranges within the executive unit memorandum of understanding ("MOU") which is in effect at the time of such negotiations.

6. In addition to the limitations and ranges of the executive unit MOU, the City Manager has authority to negotiate with department heads to increase certain benefits in employment contracts. Specifically, the City Manager may: 1) allow up to one additional week of accrued vacation over and above the amount specified in the executive unit MOU; and 2) negotiate a "bank" of sick leave and vacation time which new department heads receive upon beginning employment with the City. The negotiated amounts for a beginning "bank" of sick leave shall not exceed one hundred hours and for vacation time the amount shall not exceed eighty hours. Any employment contract provisions under negotiation that exceed these amounts or that exceed the limitations and ranges in the existing executive unit MOU shall be submitted to the City Council for approval.

7. Nothing in this subsection shall be deemed to give the City Manager the right to appoint or remove the Executive Assistant to the Council/Office Manager, City Clerk, City Treasurer or the City Attorney.

ORDINANCE NO. 0-09-12

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COLTON, CALIFORNIA, ADDING SECTION 2.04.040 TO THE COLTON MUNICIPAL CODE RELATING TO THE SUPERVISION OF THE EXECUTIVE ASSISTANT TO THE COUNCIL/OFFICE MANAGER AND MAKING OTHER CLARIFYING CHANGES TO SECTION 2.16.070(B) OF THE COLTON MUNICIPAL CODE

WHEREAS, the City Council would like to switch the appointment and supervision authority for the Executive Assistant to the Council/Office Manager from the City Manager to the City Council; and

WHEREAS, the City Council would also like to make some related clarifying changes to Chapter 2.16 of the Colton Municipal Code;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COLTON, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Section 2.04.040 (Executive Assistant to the Council/Office Manager).

Section 2.04.040 (Executive Assistant to the Council/Office Manager) is hereby added to the Colton Municipal Code to read as follows:

“2.04.040 Executive Assistant to the Council/Office Manager

The City Council shall have the authority to appoint, supervise and remove the Executive Assistant to the Council/Office Manager, who shall serve at the will and pleasure of the City Council in accordance with the Compensation and Benefits Resolution for Non-Represented Confidential Group Employees of the City of Colton, but who shall be a member of the civil service system as provided for in Chapter 2.48 of the Colton Municipal Code. Actions of the City Council taken pursuant to this section shall be by at least a majority vote (at least 4) of the entire membership of the City Council; provided, however, that any termination decision shall be by at least a super majority vote (at least 5) of the entire membership of the City Council. The employee shall take direction from the Mayor and each Council Member individually. If a title change is implemented for the position of Executive Assistant to the Council/Office Manager, the provisions of this section shall apply to such position even before an amendment to this section may be adopted.”

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2 **Section 2. Section 2.16.070 (Powers and Duties).**

3
4 Sub-Paragraph (B) of Section 2.16.070 (Powers and Duties) of Chapter 2.16 (City
5 Manager) is hereby amended to read as follows:

6 "

7 B. To appoint, on the basis of merit and, when necessary for the good
8 of the City, demote or remove all department heads of the City,
9 except as otherwise provided in this section, and except as he may
 authorize the head of a department or office to appoint and remove
 subordinates in such department or office.

10 1. Persons appointed or promoted to the following department
11 head positions on or after June 5, 2001, shall serve at the
12 will and pleasure of the City Manager and may be
13 terminated from City employment by the City Manager
 without proof of cause or other justification and without
 right of appeal or hearing:

- 14 a. Assistant City Manager;
15 b. Finance Director;
16 c. Community Development Director;
17 d. Human Resources Manager;
18 e. Police Chief;
19 f. Fire Chief;
20 g. Parks, Recreation and Family Services Director;
21 h. City Engineer;
22 i. Utility Director;
23 j. Redevelopment Agency Director;
24 k. Librarian;
25 l. Public Services Manager;
26 m. Assistant Utility Director;
27 n. Community Childcare Director.

28 2. Any person appointed or promoted to a new department
 head classification created by Resolution on or after June 5,
 2001, shall also serve at the will and pleasure of the City
 Manager and may be terminated from City employment by
 the City Manager without proof of cause or other
 justification and without right of appeal or hearing.

 3. Department heads appointed or promoted to their
 Department Head positions prior to June 5, 2001, Shall
 have the right to be terminated only under the provisions of

1 this municipal code as it existed at the time of their
2 appointment to the position, unless they modify the terms
3 of their employment pursuant to a contract as described
4 below.

4 4. The City Manager is empowered to enter into contracts on
5 behalf of the City with department heads establishing terms
6 and conditions of employment. Said employment contracts
7 shall take precedence over and supersede any otherwise
8 applicable Ordinance, Resolution, rule or regulation,
9 previous or current, including, but not limited to,
10 subsection 2 16.070(B).

8 5. The City Manager has authority to negotiate the terms and
9 conditions of employment contracts with department heads
10 pursuant to the established limitations and ranges within the
11 executive unit memorandum of understanding ("MOU")
12 which is in effect at the time of such negotiations.

12 6. In addition to the limitations and ranges of the executive
13 unit MOU, the City Manager has authority to negotiate
14 with department heads to increase certain benefits in
15 employment contracts. Specifically, the City Manager may:
16 1) allow up to one additional week of accrued vacation over
17 and above the amount specified in the executive unit MOU;
18 and 2) negotiate a "bank" of sick leave and vacation time
19 which new department heads receive upon beginning
20 employment with the City. The negotiated amounts for a
21 beginning "bank" of sick leave shall not exceed one
22 hundred hours and for vacation time the amount shall not
23 exceed eighty hours. Any employment contract provisions
24 under negotiation that exceed these amounts or that exceed
25 the limitations and ranges in the existing executive unit
26 MOU shall be submitted to the City Council for approval.

21 7. Nothing in this subsection shall be deemed to give the City
22 Manager the right to appoint or remove the Executive
23 Assistant to the Council/Office Manager, City Clerk, City
24 Treasurer or the City Attorney."

24 **Section 3. Severability.**

25 If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this
26 Ordinance, or any part thereof is for any reason held to be unconstitutional, such decision shall
27 not affect the validity of the remaining portion of this ordinance or any part thereof. The City
28 Council hereby declares that it would have passed each section, subsection, subdivision,

paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional.

Section 4. Effective Date.

The City Clerk shall certify to the passage of this Ordinance and cause the same or a summary thereof to be published within fifteen (15) days after adoption in a newspaper of general circulation, printed and published in Colton, California, and the Ordinance shall take effect thirty (30) days after its enactment in accordance with the provisions of California law.

ORDINANCE PASSED AND APPROVED on this 18th day of September, 2012.

SARAH S. ZAMORA
Mayor

ATTEST:

EILEEN C. GOMEZ, CMC
City Clerk

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CERTIFICATION

I, EILEEN C. GOMEZ, City Clerk of the City of Colton, California, do hereby certify that the foregoing ordinance (O-09-12) was properly introduced and subsequently adopted at a regular meeting of the City Council of the City of Colton, California, duly held on the 18th day of September, 2012 by the following vote of the City Council:

AYES:
NOES:
ABSENT:
ABSTAINED:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Colton, California, this _____ day of _____, 2012.

Eileen C. Gomez, City Clerk
City of Colton

1 SUMMARY

2 On September 18, 2012, the Colton City Council will consider adopting an ordinance
3 adding Section 2.04.040 to the Colton Municipal Code relating to the supervision of the Executive
4 Assistant to the Council/Office Manager and making other clarifying changes to Section
5 2.16.070(B) of the Colton Municipal Code.

6 The City Council meets at 6:00 p.m. in the Council Chambers in the Colton City Hall,
7 located at 650 N La Cadena Drive, Colton, CA 92324. The City Clerk's office is located in City
8 Hall near the Council Chambers.
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